

March 29, 2006

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, Second Floor
Boston, MA 02110

RE: Verizon New England, Inc., d/b/a Verizon Massachusetts, D.T.E. 06-26

Dear Secretary Cottrell:

On February 3, 2006, Verizon New England, Inc., d/b/a Verizon Massachusetts (“Verizon”) filed to amend tariff M.D.T.E. No. 10 to introduce a late payment charge for residential customers. Verizon’s proposed tariff states that a customer shall be given 30 calendar days from the receipt of the bill for payment in full. If Verizon does not receive payment by the customer’s next billing date, the customer will be subject to a late payment charge of 1.5% per month.

On March 3, 2006, the Department of Telecommunications and Energy (“Department”) issued an Order suspending implementation of the proposed late payment charge until June 5, 2006. On March 9, 2006, the Department requested comments on the proposal. The Attorney General submits this letter as his comments on Verizon’s proposed late fee. As discussed below, the Attorney General requests that the Department reject the proposed late payment charge.

**Verizon’s Late Fee Is A General Increase In Rates
Requiring Notice, Investigation and Evidentiary Hearings**

Verizon’s proposed late payment charge is a general increase in rates that triggers the notice, hearing, and other obligations contained in G.L. c. 159, § 20. A “general increase in rates” is an increase in any rate that increases the regulated company’s overall revenue. *Verizon*, D.T.E. 01-31-Phase II, p. 70 (2003).¹ Verizon’s proposed late payment charge will increase the company’s overall revenue because it is a new and additional charge beyond Verizon’s approved rate that is not offset by a reduced rate elsewhere in the rate structure. The Department must hold

¹ See *New England Telephone and Telegraph Co.*, 94-50, p. 232 (May 12, 1995) (holding where application of formula resulted in price change that increased company’s aggregate revenues, this was a “general increase” subject to the procedural requirements of G.L. c. 159, § 20); *Consumers Organization for Fair Energy Equality, Inc. v. Dept. of Pub. Util.*, 368 Mass. 599, 604-605 (1975) (holding adjustment in rates by application of mathematical formula, which Department had previously approved, was not a “general increase” subject to the procedural requirements of G.L. c. 159, § 20). Verizon’s proposed fee is not the result of the application of a mathematical formula previously set in its rates. The charge will result in an increase in the company’s aggregate revenue.

a public hearing and conduct an investigation into the propriety of Verizon's proposed rates pursuant to G.L. c. 159, § 20. At the hearing, Verizon bears the burden of showing that the increased rate is necessary for it to receive reasonable compensation for the service it renders. G.L. c. 159, § 20.

Verizon's Late Fee Results In Double Recovery

Verizon already receives compensation for the costs it incurs when customers' payments are late. Verizon's rates include an allowance for recovery of the cost of working capital.² See *New England Telephone and Telegraph Company*, D.P.U. 86-33-G (1989); D.T.E. 94-50, pp. 305-309.³ Verizon's cash working capital allowance is based on the results of lead-lag studies conducted by the company. D.P.U. 86-33-G at 20. The lead-lag study determined the number of days between the delivery of service and the receipt of payment from customers and compared that time period to the number of days between the delivery of those services to the customer and the time when it is required to pay for corresponding costs associated with providing those services. *Id.* Because Verizon's rate includes an allowance for the cost it incurs when customers pay late, Verizon's proposed late payment charge would amount to double billing. Furthermore, Verizon's 1.5% late payment charge amounts to an exorbitant annual interest rate of 19.56%. This rate is certainly higher than would be necessary for Verizon to recover its cost,⁴ and is significantly higher than the rate Verizon is allowed to charge non-residential customers for late payment.⁵

²Furthermore, Verizon, in addition to the working capital allowance, also receives monies through its rates for those instances when customers never pay. This bad debt expense is already included in rates.

³Cash working capital is the amount of cash required to operate a utility during the interim between the rendition of service and the receipt of payment therefor. A.J.G. PRIEST, *PRINCIPLES OF PUBLIC UTILITY REGULATION* 183 (1969).

⁴Verizon's cost of short-term debt, as represented by the cost of commercial paper, was 4.3% as of December 31, 2005. *Verizon*, 2005 Annual Report, p. 52. Verizon's cost of long-term debt was 6.3%. *Id.* at 19. The proposed interest rate is nearly five times the cost of Verizon's short-term debt.

⁵ 220 C.M.R. 26.10 governs late payment charges applicable to non-residential customers. The late payment charge is calculated as an annual rate of interest equivalent to the rate paid on two-year United States Treasury notes for the preceding 12 months, plus 10%. 220 C.M.R. 26.10 (2005). The maximum allowed annual rate of interest for a late payment charge is currently 14.40%. See Federal Reserve Statistical Release H.15 (January 3, 2006).

**Verizon's Request for a Late Fee Violates the Department's Rate Freeze
Order in D.T.E. 01-31**

Verizon's proposed late payment charge violates the current rate freeze imposed on residential rates. When the Department last examined Verizon's rates in 2003, it allowed Verizon to implement a one-time increase in its residential rates, but held that Verizon could only "seek further upward pricing flexibility for residential service when it can demonstrate the presence of sufficient competition for these services." D.T.E. 01-31-Phase II, p. 83. The Department "froze" Verizon's rates. *Id. See Verizon*, D.T.E. 04-107, p. 5 (describing Verizon's rates as "frozen"). Verizon has not demonstrated in this filing that there is competition for residential services, and, therefore, it is not entitled to request an increase in rates through imposition of a late fee.

Verizon's Late Fee Violates Public Policy

General Laws c. 164, § 94D, prohibits a late payment charge for gas and electric customers for their failure to pay a bill. The Department has found a "strong public policy against charging interest on residential accounts for utility service," and extended this prohibition on late fees to water companies. *See Barnstable Water Company*, D.P.U. 91-189-A, p.9 (July 31, 1992) (rejecting utility's proposed 1.5% late payment charge on residential past due accounts, but allowing charge for commercial accounts). The proposed late payment charge, by increasing the cost to those customers unable to pay their bills on time, makes a basic utility less accessible. The Department should take this opportunity to apply this strong public policy to the provision of telephone service.

If a customer pays his bill late, it is likely that the customer is financially unable to pay the bill. *See Nat'l Consumer Law Ctr., Access to Utility Service* 171 (1995). As evidence of Department policy of maintaining telephone access to low-income customers, Department regulations allow for customers who are unable to pay their bill to arrange a deferred payment plan with the company. *Residential Billing and Termination Practices: Telecommunications Companies*, D.P.U. 18448 at 7.1 (2000). A deferred payment agreement "may not include a finance charge." *Id.* at 7.2. This prohibition of finance charges indicates the Department's policy of not penalizing residential customers who are unable to pay their bill in a timely manner.

At the federal and state levels, universal residential telephone service has been an important priority. The Department has structured rates to allow "the vast majority of the state's population" to obtain basic telecommunications services. D.T.E. 01-31-Phase II, p. 69 n. 49 citing D.P.U. 89-300, p. 12 (1990). Despite the importance of providing essential telephone service to low-income persons, Verizon intends to impose a late payment charge on Lifeline

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customers, as well as customers who are seriously ill, elderly, or have a personal emergency. The Department should maintain its universal service policy and its long-standing Residential Billing and Termination Practices and deny Verizon's request to impose a finance charge on its vulnerable customers.

Verizon Has Recourse For Customers Who Fail To Pay Their Bill

Verizon's residential billing practices in Massachusetts are governed by *Residential Billing and Termination Practices: Telecommunications Companies*, D.P.U. 18448 (2000). This comprehensive set of rules provides recourse for Verizon if residential customers fail to pay their bill in a timely manner. An account that remains unpaid thirty days after receipt of the bill is considered delinquent. *Id.* at 1.1(e). The company may discontinue service for nonpayment of a delinquent account amounting to \$25 or more. *Id.* at 5.1(a). The threat of discontinuance of essential telephone service is adequate incentive for those who are able to pay their bills in a timely manner.

Conclusion

Approval of Verizon's proposed late payment charge would be inconsistent with Department precedent and public policy. Although Verizon justifies its proposed late payment charge by analogizing it to the late payment charge imposed on its business customers, the Department has long recognized important differences in how it evaluates residential and business telephone service. *See, e.g.*, D.T.E. 01-31-Phase I Order, pp. iv-v (finding there is "sufficient competition" in business service but Verizon is a "dominant carrier" in residential service, therefore subjecting business and residential services to different regulatory frameworks). If a business is not willing to pay a late payment charge, it may choose another service provider. A residential customer does not have this flexibility.

For these reasons, then, the Department should reject Verizon's proposed late payment charge.

Respectfully submitted,

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